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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,692	12/10/2001	Michael Patrick Lyons	P 280456 702176 REG	9882

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EXAMINER

HAMILTON, ISAAC N

ART UNIT PAPER NUMBER

3724

DATE MAILED: 06/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/007,692

Applicant(s)

LYONS ET AL.

Examiner

Isaac N Hamilton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 15-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5,7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-14 and 18-20, in Paper No. 10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Specification

2. The disclosure is objected to because of the following informalities: page 6, middle of paragraph [00020], "angel" should be changed to -angle--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 8-12 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kirsten (1,866,855).

Regarding claims 1 and 18, note base 10; adjustable post 12; base-contacting surface juxtaposed base 10 and post 12; linear motion, first position and second position in a first

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direction in column 3, lines 21-48; first force applying mechanism 15, 22; impacting post 12'; impact position and elevated position in second direction is inherent in an alligator shear, column 3, line 58; second force applying mechanism also inherent in alligator shear; force applying element 15; first force applying device 22; cutting axis in figure 3 is a vertical line between impacting post 12' and adjustable post 12.

Regarding claims 2 and 19, note flat upper surface juxtaposed between base 10 and post 12.

Regarding claim 3, note post 12 slides on base 10.

Regarding claims 4 and 20, note base-contacting surface is flat in figure 3 and slides horizontally on base 10.

Regarding claim 8, in an alligator shear it is inherent for the second force applying mechanism to be supported by the base.

Regarding claim 9, it is inherent in an alligator shear that the second force applying mechanism includes a pressure cylinder.

Regarding claims 10 and 11, note in figure 3 that the impacting post 12' moves vertically and the adjusting post moves horizontally.

Regarding claim 12, note first stop in figure 3. The top portion of base 10, which houses the force applying element 15 is the first stop.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirsten in view of Wallis (4,774,865). Kirsten discloses everything as noted above, but does not disclose a pressure cylinder containing nitrogen. However, Wallis teaches pressure cylinder containing nitrogen 16. It would have been obvious to provide a pressure cylinder containing nitrogen in Kirsten as taught by Wallis in order to automate the force applying mechanism in Kirsten.

Regarding claim 7, note first side on the right side of post 12 in figure 3, and second side on the left side of the post 12 in figure 3. Kirsten and Wallis disclose the claimed invention except for a second pressure cylinder. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second pressure cylinder, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirsten in view of Mori (5,671,647). Kirsten discloses everything as noted above, but does not disclose a second stop. However, Mori teaches second stop 15, 151. It would have been obvious to provide a second stop in Kirsten as taught by Mori in order to prevent damage to the adjustable post by restricting movement of the adjustable post into the path of the impacting post.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirsten in view of Graham (5,383,381). Kirsten discloses everything as noted above, but does not disclose a gib. However, Graham discloses gib 48. It would have been obvious to provide a gib in Kirsten as taught by Graham in order to prevent the adjustable post from sliding unevenly and jutting one

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end of the adjustable post into the path of the impacting post, thus creating damage to the adjustable post.

9. Claims 1-4, 8-12 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirsten in view of Chazen (3,645,159).

Regarding claims 1 and 18, note base 10; adjustable post 12; base-contacting surface juxtaposed base 10 and post 12; linear motion, first position and second position in a first direction in column 3, lines 21-48; first force applying mechanism 15, 22; impacting post 12'; second force applying mechanism also inherent in alligator shear; force applying element 15; first force applying device 22; cutting axis in figure 3 is a vertical line between impacting post 12' and adjustable post 12.

Kirsten discloses everything as noted above, but does not disclose an impact position and does not disclose an elevated position. However, Chazen discloses an alligator shear that teaches impact position and elevated position in figure 1. It would have been obvious to provide an impact position and an elevated position in Kirsten as taught by Chazen in order to duplicate the motion required in an alligator shear.

Regarding claims 2 and 19, note flat upper surface juxtaposed between base 10 and post 12.

Regarding claim 3, note post 12 slides on base 10.

Regarding claims 4 and 20, note base-contacting surface is flat in figure 3 and slides horizontally on base 10.

Regarding claims 8 and 9, note second force applying mechanism in column 2, lines 27, 28 in Chazen.

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Regarding claims 10 and 11, note in figure 3 that the impacting post 12' moves vertically and the adjusting post moves horizontally.

Regarding claim 12, note first stop in figure 3. The top portion of base 10, which houses the force applying element 15 is the first stop.

10. Claims 5, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kirsten and Chazen as applied to claims 1-4, 8-12 and 18-20 above, and further in view of Wallis (4,774,865).

The combination discloses everything as noted above, but does not disclose a pressure cylinder containing nitrogen. However, Wallis teaches pressure cylinder containing nitrogen 16. It would have been obvious to provide a pressure cylinder containing nitrogen in the combination as taught by Wallis in order to automate the force applying mechanism in Kirsten.

Regarding claim 7, note first side on the right side of post 12 in figure 3, and second side on the left side of the post 12 in figure 3. The combination and Wallis disclose the claimed invention except for a second pressure cylinder. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second pressure cylinder, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kirsten and Chazen as applied to claims 1-4, 8-12 and 18-20 above, and further in view of Mori (5,671,647). The combination discloses everything as noted above, but does not disclose a second stop. However, Mori teaches second stop 15, 151. It would have been obvious to

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provide a second stop in the combination as taught by Mori in order to prevent damage to the adjustable post by restricting movement of the adjustable post into the path of the impacting post.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kirsten and Chazen as applied to claims 1-4, 8-12 and 18-20 above, and further in view of Graham (5,383,381). The combination discloses everything as noted above, but does not disclose a gib. However, Graham discloses gib 48. It would have been obvious to provide a gib in the combination as taught by Graham in order to prevent the adjustable post from sliding unevenly and jutting one end of the adjustable post into the path of the impacting post, thus creating damage to the adjustable post.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bittner and Fasske are cited for similar structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 703-305-4949. The examiner can normally be reached on Monday thru Friday between 8am and 5pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

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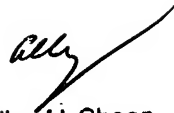
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June 19, 2003



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